Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O. No. 174 of 2003

1-Smt.Yashoda W/o Sri Dinesh Chand Bhatt,
2-Master Jatin S/o Sri Dinesh Chand Bhatt,
3-Smt. Bachuli Devi W/o Chander Dutt Bhatt,
All residents of Hathikhal, Haldwani,
District-Nainital.

.....Claimants/Appellants

Versus

1-Sri Shekhar Chand Joshi
(Owner of Vehicle No. UP-02 D/7469).
R/o C/o B.R. Trust, Bareilly Road,
Haldwani
2-New India Assurance Co. Ltd.,
through Divisional Manager, Civil Lines,
Haldwani (Nainital)

..... Opp.party/Respondents.

Sri Zafar Ullah Siddique, learned counsel for the appellants.
Sri T.A.Khan, learned counsel for the respondent No.2.

.....

Date: 27th Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the claimant/ appellants under Sec. 173 of the Motor Vehicles Act, 1988 for enhancement of award passed by the Motor Accident Claims Tribunal/Addl. District Judge, Haldwani, District-Nainital on 20.5.2003 in Motor Accident Claim Petition Nos. 48 of 2002, whereby the claim petition filed by the claimants has been allowed for grant of Rs. 2,15,000/- alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 22.1.2002 at about 3.30 p.m. Dinesh Chandra Bhatt was going on his motor cycle. After parking the said motor cycle

near Nirmala Convent School, he was walking on foot on the road with Mohan Chandra, then truck No.UP02D-7469 came from Haldwani side and hit Dinesh Chandra Bhatt from the back side. In this accident Dinesh Chandra Bhatt sustained injuries and he died due to injuries in Dhanantwari Hospital, Bareilly on 23.1.2002. It was alleged that deceased Dinesh Chandra Bhatt was working on the post of Manager in Bhatt & Company, Arjunpur, Haldwani and was getting Rs. 4,800/- per month as salary. He was 26 years old at the time of accident.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statement. The Insurance Company-Opp.party No.2 denied all the allegations of the claim petition. The Opp.party No.1-owner of the offending truck admitted the accident but alleged that the accident occurred due to negligence of the deceased himself. The Tribunal, on the pleading of the parties, framed necessary issues after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the claimants have come up in this appeal for enhancement of the award.

4- The learned counsel for the appellants submitted that the learned Motor Accident Claims Tribunal disbelieved the statement of the witnesses. A suggestion has been put in the cross examination on behalf of the owner of the vehicle that the deceased was not getting more than Rs. 3,000/- per month and this has been answered negative. Meaning thereby the owner himself admitted that the deceased was getting Rs. 3,000/- per month. The statement of the employer as P.W.3 is also on record who has stated on oath that the deceased was being paid Rs. 4,000/- per month. These statement have been discussed by the Tribunal but has been disbelieved on the ground

that no register was maintained there for the payment and no receipt of the payment was filed.

5- Learned counsel for the appellant further contended that the learned Tribunal came to a wrong conclusion that the deceased was getting Rs. 50/- per day. Considering the facts and circumstances of the case and the evidence on record, in our opinion, there was no reason to disbelieve that the deceased was earning Rs.3000/- per month. After deducting one-third, which he used to spend upon himself, the amount comes to Rs. 2000/- per month. The Tribunal, considering the discrepancy in the age of the deceased rightly applied the multiplier of **16.** Now the amount of compensation comes to Rs. 2000X12X16= Rs. 3,48,000/- which the claimants are entitled to get. The Tribunal further awarded Rs. 15,000/- which the claimants have incurred on the treatment of the deceased in the hospital. Thus, the claimants are entitled to get Rs.3,99,000/- from the Opp.party No.2-New India Assurance Company.

6- The appeal is allowed partly. The claimants shall get Rs. 3,99,000/- (Rupees three lac ninety nine thousand) alongwith interest at the rate fixed by the Tribunal from the Opp. party No.2- New India Assurance Company Ltd. The impugned order dated 20.5.2003 is modified accordingly.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh